

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

SHAWN N. WAGNER

Plaintiff,

v.

CHELAN COUNTY, CITY OF
WENATCHEE, MIKE LAMON, ROY S.
FORE, JUDGE LESLEY ALLEN and
DUNKIN HAGOPIAN,

Defendants.

NO. CV-12-0383-CI

**ORDER ADOPTING REPORT AND
RECOMMENDATION AND DISMISSING
COMPLAINT**

1915(g) ADVISORY

On September 17, 2012, U.S. Magistrate Judge James P. Hutton filed a Report and Recommendation in this matter, recommending Mr. Wagner's Complaint be dismissed without prejudice. Magistrate Judge Hutton concluded that Plaintiff's complaint against an arresting officer, a judge, a prosecutor, a public defender, a city and a county, failed to state a claim upon which relief may be granted.

Although given the opportunity to do so, Plaintiff failed to amend his complaint to present facts which would lower the shield of judicial and prosecutorial immunity. He presented no facts to show his public defender acted under color of state law. He failed to allege either the City of Wenatchee or Chelan County engaged in a pattern or practice that resulted in the deprivation of his constitutional rights. Finally,

absent a showing that his conviction or sentence had been invalidated, Plaintiff's challenge to the lawfulness of his arrest and continuing confinement is precluded under *Heck v. Humphrey*, 512 U.S. 477, 487 (1994).

There being no objections, the Court adopts the Report and Recommendation. The Complaint is hereby dismissed without prejudice for failure to state a claim upon which relief may be granted under 28 U.S.C. § 1915(e)(2) and 1915A(b)(1). The Clerk's Office shall enter judgment and close this file.

1915(g) ADVISORY: Pursuant to 28 U.S.C. § 1915(g), enacted April 26, 1996, a prisoner who brings three or more civil actions or appeals which are dismissed as frivolous or for failure to state a claim will be precluded from bringing any other civil action or appeal *in forma pauperis* "unless the prisoner is under imminent danger of serious physical injury." 28 U.S.C. § 1915(g). Plaintiff is advised to read the new statutory provisions of 28 U.S.C. § 1915. This dismissal of Plaintiff's complaint may count as one of the three dismissals allowed by 28 U.S.C. § 1915(g) and may adversely affect his ability to file future claims.

Accordingly, **IT IS HEREBY ORDERED:**

1. The Court **ADOPTS** the Report and Recommendation by Magistrate Judge Hutton, ECF No. [11](#).
2. The Complaint, ECF No. [9](#), is hereby **DISMISSED WITHOUT PREJUDICE**.
3. The Clerk's Office is directed to **CLOSE** the file.

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1 4. The Court certifies that any appeal of this dismissal would not
2 be taken in good faith.

3 **IT IS SO ORDERED.** The Clerk's Office is directed to enter this
4 Order, enter judgment, and provide copies to Plaintiff at his last known
5 address and to the Office of the Attorney General of Washington, Criminal
6 Justice Division.

7 **DATED** this 18th day of October 2012.

8
9 s/Edward F. Shea
10 EDWARD F. SHEA
Senior United States District Judge

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